IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.246 OF 2005

Prabhakar Pandurang Keni & Ors. ...Appellants
Vs.
Mugdha Builders & Ors. ...Respondents

Mr.S.B.Prabhawalkar for the Appellants
Ms Anjali Helekar & S.A.Abhyankar for Respondent No.2
Mr.Rohal Nohhar for Respondent no.3

CORAM: A.S.OKA,J.
DATE : FEBRUARY 21, 2005.

P.C.:

1. Heard the Counsel for the parties. The Appeal is by the original Plaintiffs. The order impugned is dated 22nd December 2004 by which the learned Trial Judge has dismissed the Notice of Motion taken out by the Appellants for temporary injunction.

2. The Appellants have filed the suit contending that they are in possession of the suit property. The suit is for perpetual injunction restraining the Respondents from obstructing the alleged possession of the Appellants/Plaintifffs over the suit property. The learned Judge apart from considering the merits has recorded a finding that the Plaintiffs along with two others had filed S.C.Suit No.1594 of 1996 filed against the Defendant No.3/Respondent No.3 herein and in the said suit the Plaintiffs claimed to be in possession. Though ad-interim order was passed in the said suit, by order dated 8th March 1999, the Notice of Motion No.1569 of 1996 taken out in the said suit was dismissed by the Trial Court recording a prima facie finding that the

Plaintiffs therein have failed to prove that they were in possession of the suit property. The Respondent No.3 herein is claiming through the Respondent No.2. It is not in dispute that the order passed on 8th March 1999 in earlier suit has attained finality.

3. If in the earlier suit the present Plaintiffs/Appellants prima facie failed to prove their possession, in the present suit the Appellants cannot get any interim order on the footing that they are in possession of the suit property. In this view of the matter, the learned Judge has refused to grant discretionary relief of temporary injunction in favour of the Appellants. No fault can be found with the approach of the learned Trial Judge. The Appeal is dismissed with no order as to costs.

4. Shri Prabhawalkar submitted that the S.C.Suit No.1594 of 1996 is already fixed for framing of issues. Liberty to the Appellants to file appropriate application before the Trial Court praying for tagging the present suit with the earlier suit. Liberty to apply for expeditious hearing of both the suits.

5. It is made clear that the findings recorded by the Trial Court are the tentative findings which are recorded for limited purpose of deciding the prayer for interim relief and the said findings are obviously not binding on the Trial Court at the time of final hearing of the suit.

JUDGE.